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713-759—63

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 587

AMERICAN COMPRESS WAREHOUSE, DIVISION OF FROST-WHITED COMPANY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 11–17) is reported at 321 F. 2d 547. The Board's Decision and Order are reported at 137 NLRB 980.

JURISDICTION

The decision of the court of appeals was entered on August 13, 1963. A petition for rehearing was denied on September 23, 1963, and the decree was entered on September 27, 1963 (Pet. 11, 19, 21–22). The petition for a writ of certiorari was filed on October 28, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that petitioner discharged an employee because of his union sympathies.

STATUTE INVOLVED

The relevant statutory provisions are set forth at pp. 2–3 of the petition.

STATEMENT

Petitioner is a Louisiana corporation engaged in the warehousing and compressing of cotton (R. 43; B.A. 27–29).[1] Late in 1960, the United Packinghouse, Food and Allied Workers, AFL–CIO (the Union) began an organizational campaign among petitioner's employees. Throughout the campaign petitioner manifested its hostility to the Union, awarded positions to those employees who indicated that they "could forget about the Union," and threatened loss of work and less desirable jobs to those who continued their support of the Union (R. 45–46; B.A. 11–13, 18, 25–29).[2]

The present petition concerns only petitioner's discharge of one employee, Simon Littleton, less than two months before the date of a Board-conducted

[1] "R." refers to Volume I, Transcript of Record, printed for the use of the court of appeals; "B.A." refers to the Appendix to the Board's brief in the court of appeals. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

[2] Petitioner did not except to the Board's determination that such conduct violated Section 8(a)(1) (R. 46–57). Consequently, the court of appeals properly held that this issue was foreclosed (Pet. 12).

representation election. The circumstances surrounding this discharge, substantially undisputed, are as follows:

On September 26, 1961, Plant Superintendent Robert Dupuy approached Littleton and asked him, "What do you think of this damn Union?". When Littleton replied that he did not know, Dupuy countered, "Oh, hell, yes, you know about it." He added that "they" had been "working on it for a year," and with the time for voting drawing close,[1] Littleton "ought to know which way" he was going to vote (R. 47; B.A. 4). When Littleton again protested that he knew nothing about voting, Dupuy declared the Company had been "good" to the employees and had provided them with insurance and paid their doctor bills (R. 47; B.A. 4–5). Littleton replied, "[W]hy are you always telling me that? * * * I put myself in the insurance. If you don't do something I will do something for myself" (R. 47; B.A. 5). Dupuy then asked if Littleton had ever worked in a plant in which the employees were represented by a union. When Littleton replied that he had, Dupuy retorted, "Well, goddamn, I don't need the goddamn union. I don't need it." and he told Littleton that he should look for another job if he was dissatisfied. The conversation ended with Dupuy warning Littleton, "Now, listen, this is only between me and you. Don't say anything to anybody about it" (B.A. 5). The next day, September 27, petitioner's general manager, to whom Dupuy had related the conversation, called Littleton into his office and

[1] The election was to be held on November 17, 1961, and was, in fact, held on that date (B.A. 10).

discharged him. He then told Littleton that he was being discharged because he had "said some goddamn things to Mr. Dupuy that I don't like" (R. 47; B.A. 6-7).

Before the Board, petitioner claimed that Littleton had been discharged because, in the conversation with Dupuy, he had been insolent and ungrateful when reminded of the economic benefits which the Company had provided. The Board found that Littleton had in fact been discharged because of his support of the Union (R. 47–48). The court of appeals sustained the Board's finding (Pet. 14–15).[4]

ARGUMENT

1. Petitioner's contention that Littleton's discharge was attributable to his "openly expressing ingratitude for existing economic benefits conferred upon him by his employer" (Pet. 6) is contrary to the finding, made by the Board and sustained by the court of appeals, that Littleton was in fact discharged because of his union sympathies. An evidentiary issue of this kind, which turns largely on the credibility of witnesses, does not warrant review by this Court. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 491.

In any event, it is clear that the record amply supports the Board's finding. Littleton was discharged the day after he had refused to join in Dupuy's condemnation of the Union. The court of appeals correctly concluded that the conversation with Dupuy, its proximity to the Board election, and the Com-

[4] The court of appeals also sustained the Board's findings that the other employees were discriminated against because of their union activity. (Pet. 15–17). Petitioner does not challenge the court's decision in that respect.

pany's "other statements of pressure against the union rather clearly light the inference drawn by the Board that Littleton was fired because of his militant predisposition towards unionism" (Pet. 14–15).

2. Petitioner's claim that the court of appeals' decision conflicts with *National Labor Relations Board* v. *Local Union 1229, IBEW*, 346 U.S. 464 (Pet. 7), is insubstantial. In that case employees were discharged for distributing handbills which disparaged the employer's product. The question before the Court was whether the distribution, "which had no discernible relation" (346 U.S. at 476) to the existing labor controversy, was protected by the Act. In the present case the conduct which, according to the Board's findings, caused the employee to be discharged, *i.e.*, expressions of sympathy with the Union, was clearly protected by the Act.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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NOVEMBER 1963.